

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,) Case No. 4:10-CR-253 (CEJ)
)
vs.)
)
JAMAAL CURRY JOHNSON,)
)
Defendant.)

MEMORANDUM AND ORDER

Pursuant to 28 U.S.C. § 636(b), the Court referred all pretrial motions in this case to United States Magistrate Judge Frederick R. Buckles. On April 11, 2012, Judge Buckles filed a Report and Recommendation with respect to the motion of defendant Jamaal Curry Johnson to dismiss Count II of the superseding based on double jeopardy. The defendant filed timely objections to the magistrate judge's recommendation that the motion be denied [Doc. # 201].

Pursuant to 28 U.S.C. § 636(b)(1), the Court is required to "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." Having done so, the Court concludes that the factual findings made by Judge Buckles are supported by the evidence, and that his legal conclusions are correct.

In Count II, the defendant is charged with conspiracy to use and carry firearms during and in relation to the drug trafficking crime charged in Count I, in violation of 18 U.S.C. § 924(o). A fair reading of the indictment makes it clear that Count II charges a *conspiracy* to commit an offense that violates 18 U.S.C. § 924(c)----it does

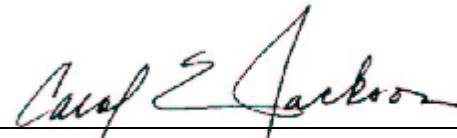
not charge a substantive violation of § 924(c). The conspiracy that is a violation of § 924(o) and the underlying conduct that is a violation of § 924(c) are separate and distinct from each other. See United States v. Clay, 579 F.3d 919, 933 (8th Cir. 2009). Count II charges a single offense and seeks to impose a single punishment. Therefore, Count II does not violate the defendant's right to be protected from double jeopardy.

Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation of United States Magistrate Frederick R. Buckles [Doc. # 183] is sustained, adopted, and incorporated herein.

IT IS FURTHER ORDERED that the motion of defendant Jamaal Curry Johnson to dismiss Count II of the superseding indictment for violation of the Double Jeopardy Clause [Doc. # 165] is denied.

Dated this 27th day of April, 2012.



CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE